mane to the bill under consideration which provides for construction . . . and inasmuch as this amendment is not a limitation for the repairs and for shore facilities and for the housing authorized in this bill, but is an amendment to the general law covering all ships . . . and floating drydocks of the Navy Department, applying to property that is covered by two acts heretofore passed by the Congress . . . I submit that the amendment is not germane to the bill under consideration. . . . The bill provides for construction—the amendment prevents disposal of other types and classes of property. . . .

MR. [EARL C.] MICHENER [of Michigan]: Mr. Chairman, the question of germaneness to me is not important when a bill is drafted by the committee if the matter included in the committee draft has to do with the subject matter over which the committee has jurisdiction. . . .

My view is that when a Member introduces a bill and it goes before a committee it becomes a committee bill when the committee reports it out, and that an individual by introducing a bill and referring it to a committee cannot prevent the committee from adding to the bill anything over which the committee has jurisdiction. . . .

The Chairman,[19] in ruling on the point of order, stated:[20]

. . . The gentleman from Missouri [Mr. Cochran] makes the point of order against the committee amendment, which provides that title to all ships, boats, barges, and floating drydocks of the Navy Department shall remain in the United States, on the ground that it is not germane to the bill. This amendment, although a committee amendment, occupies the same position with respect to the rule of germaneness as an amendment offered from the floor.

The Chair has carefully read the bill. It is the opinion of the Chair that the substance of this bill relates solely to the construction of public works. It would be rather futile to argue that this amendment comes within the rule of germaneness because if the argument of those opposing the point of order were sustained any amendment proposing a change in any other activity of the Navy Department could also be considered as germane. Therefore the Chair sustains the point of order made by the gentleman from Missouri.

§ 23. Instructions in Motion To Commit or Recommit

An amendment incorporated in a motion to recommit with instructions must be germane to the bill sought to be amended.[1] Thus, it is not in order to propose, as part of a motion to recommit, any proposition which would not be germane if proposed as an amendment to the bill.[2]

On Mar. 22, 1949, when the reading of the engrossed copy of a

19. A.S. Mike Monroney (Okla.).

20. See 91 CONG. REC. 309, 310, 79th Cong. 1st Sess., Jan. 17, 1945.

1. See §§ 23.7 and 23.10, infra.

2. See § 23.3, infra.

bill was the unfinished business before the House, the Speaker[3] stated, in response to a parliamentary inquiry, that instructions accompanying a motion to recommit were required to be germane to the engrossed copy (perfected version) of the bill.[4]

A point of order against a motion to recommit with instructions has been made prior to completion of the reading of such motion where the matter contained in the instructions had been ruled out as not germane when offered as an amendment in the Committee of the Whole.[5]

While the precedents indicate that a motion to recommit a bill with instructions may not direct the committee to report back forthwith with a nongermane amendment, it may be in order to incorporate in such motion an amendment that is identical to one that had been made in order for consideration pursuant to a waiver of the germaneness rule, and then rejected in Committee of the Whole. See the proceedings of Aug. 4, 1976,[6] relating to the Nuclear Fuel Assurance Act, wherein the House adopted a motion to recommit the bill with instructions in order to restore a perfecting committee amendment which had been tentatively adopted in Committee of the Whole but then not reported to the House because of adoption in Committee of an amendment striking out the language of the committee amendment. (The House had subsequently rejected the amendment striking out such language.) House Resolution 1242 had specifically waived points of order under the germaneness rule to permit the consideration of the amendment recommended by the Joint Committee on Atomic Energy printed in the bill. The amendment was not germane because it provided for a rules change to permit privileged consideration of resolutions of disapproval, whereas the original bill provided no such mechanism. Pursuant to such waiver, the identical language was restored by incorporation in the motion to recommit.

Instructions in the motion to recommit must be germane to the subject matter of the bill even though not proposing a direct amendment thereto.[7]

While instructions must be germane to the section of the bill to

3. Sam Rayburn (Tex.).

4. See the proceedings at 95 Cong. Rec. 2936, 2937, 81st Cong. 1st Sess., Mar. 22, 1949. Under consideration was H.R. 1437 (Committee on Armed Services), the Army and Air Force Act of 1949.

5. See Sec. 23.3, infra.

6. 122 CONG. REC. 25425–27, 94th Cong. 2d Sess.

7. See § 23.9, infra.

which offered (see 8 Cannon's Precedents Sec. 2709), an amendment in the form of a new title at the end of a bill need only be germane to the bill as a whole.[8]

Amendments to a motion to recommit must be germane to the subject matter of the bill (and not necessarily to the motion to recommit to which offered).[9]

Where a motion to recommit with instructions is ruled out on a point of order because containing matter not germane to the bill, another motion to recommit may be offered.[10]

The Chair does not rule on hypothetical questions, and therefore declines to rule in advance as to the germaneness of instructions accompanying a motion to recommit.[11]

Instructions Must Be Germane to Bill

§ 23.1 Instructions included in a motion to commit or recommit the pending proposition must be germane thereto.

The principle that instructions included in a motion to commit or recommit must be germane to the bill is illustrated by the proceedings of July 12, 1978, discussed in Sec. 23.2, infra. .

Concurrent Resolution Related to Domestic Situation in Soviet Union—Instructions To Address Diplomatic Initiatives by United States

§ 23.2 To a concurrent resolution expressing the sense of Congress that trials of Soviet dissidents are matters of concern to the American people and impose obstacles to cooperation and confidence between the United States and Soviet Union, and urging the Soviet leadership to seek humanitarian resolutions to those cases and to improve the climate in relations between the two countries, amendments contained in three consecutive motions to commit with instructions, to urge the recall of United States negotiators at the Strategic Arms Limitations Talks (SALT), and/or urging that no further negotiations at such talks proceed until

8. See § 23.6, infra.

9. See 5 Hinds' Precedents § 6888; 8 Cannon's Precedents § 2711.

10. See § 23.3, infra.

11. See 109 CONG. REC. 25249, 88th Cong. 1st Sess., Dec. 19, 1963 (remarks of Speaker John W. McCormack (Mass.) in response to parliamentary inquiry by Mr. Charles A. Halleck (Ind.)).

the Soviet Union indicates the reliability of entering into a SALT agreement, were held not germane as unrelated to the subject matter of the resolution, which addressed only specific domestic actions by the Soviet Union and not general or specific diplomatic initiatives by the United States towards the Soviet Union.

On July 12, 1978,[12] during consideration of Senate Concurrent Resolution 95, it was demonstrated that instructions included in a motion to commit or recommit a proposition must be germane to that proposition. The proceedings were as follows:

THE SPEAKER PRO TEMPORE:[13] Without objection, the previous question is ordered on the Senate concurrent resolution.

There was no objection.

THE SPEAKER PRO TEMPORE: The question is on concurring in the Senate concurrent resolution. . . .

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Speaker . . . I have a motion to commit under the rule. . . .

THE SPEAKER PRO TEMPORE: The Clerk will report the motion to commit with instructions.

The Clerk read as follows:

Mr. Ashbrook moves to commit Senate Concurrent Resolution 95 to the Committee on International Relations with instructions to report the concurrent resolution back forthwith with the following amendment: Strike period after last paragraph and insert the following: "and it is further resolved that the Congress urges the President of the United States to recall our representatives at the SALT talks as further evidence of the commitment of this nation to the principles set out in this resolution, and that no further negotiations proceed until the Soviet Union by its actions more clearly indicates the reliability of entering into a SALT treaty with that nation."

MR. [CLEMENT J.] ZABLOCKI [of Wisconsin]: Mr. Speaker, I raise a point of order on the motion to commit with instructions. . . .

Mr. Speaker, the instructions go beyond the scope of Senate Concurrent Resolution 95 now before us. The instructions would add a further resolving clause that the Congress urge the President of the United States to recall our representatives at the SALT talks.

This clearly goes beyond the resolution, which is intended to express a condemnation of the Soviet Union, that is, the unhappiness of the Congress with the manner in which they are trying one Anatoly Shcharansky for treason and for what we believe is his right to express his opinion, and violations on the part of that government of the Helsinki Final Act. . . .

MR. ASHBROOK: . . . Mr. Speaker, in the first place, it is not a motion to recommit. Under rule XVII it is clearly stated:

> It shall be in order, pending the motion for, or after the previous question shall have been ordered on

12. 124 CONG. REC. 20500–05, 95th Cong. 2d Sess.

13. Elliott Levitas (Ga.).

> its passage, for the Speaker to entertain and submit a motion to commit, with or without instructions, to a standing or select committee.

I would hold and suggest that the motion is completely consistent with the language of the concurrent resolution. We are going so far in the concurrent resolution in the Congress to urge that the Supreme Soviet, not even in this country, but the Supreme Soviet and its leadership take certain actions, and certainly that the President of the United States take action. Again, we are not telling him he has to; we are merely urging him to take an action which, by the basic sense of the concurrent resolution, cannot be in itself a law. It is a resolution expressing the intentions, the desires, the wishes of Congress urging anyone, whether it be the President of the United States or the Supreme Soviet, to take action. It is consistent with that, and I would hope that the Chair would hold it in order. . . .

MR. ZABLOCKI: Mr. Speaker, if I may be heard further on the point of order I raised, the motion to commit that the gentleman from Ohio has made, with instructions, goes not only beyond the scope of the resolution before us, but the language of the instructions is not germane to the Senate resolution, Senate Concurrent Resolution 95 that is before us. Therefore, I again submit that it is out of order. . . .

THE SPEAKER PRO TEMPORE: Does the gentleman from Wisconsin desire to be heard further? If not, the Chair is prepared to rule on the point of order made by the gentleman from Wisconsin (Mr. Zablocki) against the motion to commit with instructions offered by the gentleman from Ohio (Mr. Ashbrook).

The motion to commit offered by the gentleman from Ohio provides that instructions will be given to the Committee on International Relations to report the concurrent resolution back with an amendment.

Therefore, the terms of the amendment must be taken into account in order to ascertain the germaneness of the motion to the resolution pending before the House. . . .

The resolution before the House is an expression of the sense of Congress with respect to the actions now underway in the Soviet Union. It is not a matter relating to the President of the United States, nor does it relate to all matters of negotiations between this country and the Soviet Union and to this country's conduct of those negotiations.

Furthermore, the last clause in the proposed amendment provides that:

> No further negotiations proceed until the Soviet Union by its actions more clearly indicates the reliability of entering into a SALT Treaty with that nation.

In the opinion of the Chair, that language, together with the fact that the instructions relate to matters pertaining to the President and not to an expression of the sense of Congress contained in the resolution itself, renders the proposed amendment beyond the scope of the original resolution and, therefore, it is not germane.

The point of order is sustained. . . .

THE SPEAKER PRO TEMPORE: At this point, the Chair will restate the question before the House in view of the proceedings which have intervened.

The question is on the adoption of the Senate concurrent resolution.

MR. ASHBROOK: Mr. Speaker, I offer a further motion to commit, which I think will be consistent with the objections raised by the Chair.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion.

The Clerk read as follows:

> Mr. Ashbrook moves to commit Senate Concurrent Resolution 95 to the Committee on International Relations with instructions to report the concurrent resolution back forthwith with the following amendment: Strike period after last paragraph and insert the following:" and it is further resolved that it is the sense of Congress that the representatives of the United States at the SALT talks be withdrawn as further evidence of the commitment of this nation to the principles set out in this resolution, and that no further negotiations proceed until the Soviet Union by its actions more clearly indicates the reliability of entering into a SALT treaty with that nation.". . .

MR. ZABLOCKI: Mr. Speaker, I make a point of order against the motion.

Mr. Speaker, this relates to the negotiations of SALT, which is not in any way within the scope of Senate Concurrent Resolution 95.

The gentleman from Ohio attempts to meet the objection or ruling of what the Speaker has pointed out in the first sentence of the gentleman's motion to instruct by changing it, that it is the sense of Congress rather than that the Congress urges the President; but the amended instructions do not in any way, Mr. Speaker, meet the Speaker's concern that the last sentence that the Speaker points out in this ruling, that no further negotiations proceed until the Soviet Union . . . indicates the reliability of entering into a SALT treaty with that nation.

Mr. Speaker, I submit this is far and beyond the scope of the resolution.

MR. ASHBROOK: . . . As far as the point of order is concerned, one of the tests is whether or not it would have been germane if it had been offered in committee. I think clearly it would have been germane if it had been offered in committee, whether it had been accepted or rejected.

Again we go back to the original statement and the original reasons. They are matters of deep concern to the American people. I am referring to the deplorable actions of the Soviet Union and we are talking about building confidence in our negotiations with the Soviet Union.

I think, consistent with the ruling of the Chair on the other point of order, this amendment would be germane at this point, because it calls for the sense of Congress, and it calls for no action on the part of the President. It is consistent with the entire body of the concurrent resolution, and I would urge the Chair to uphold my right to offer this motion to commit. . . .

THE SPEAKER PRO TEMPORE: The Chair is prepared to rule. . . .

The resolution before the House does not address the matter of the SALT treaty or the reliability of the Soviet Union with respect to the SALT treaty. And, in addition to that, the amendment to the resolution would provide that no further negotiations by the State Department proceed with respect to a specific area of foreign relations, which is not a subject matter of the concurrent resolution. . . .

Accordingly, it is the opinion of the Chair that the amendment contained in the motion to commit is broader

than the subject matter of the resolution and is, therefore, not germane to the resolution.

The point of order is therefore sustained.

MR. ASHBROOK: Mr. Speaker, I offer a further motion to commit.

THE SPEAKER: The Clerk will report the motion to commit.

The Clerk read as follows:

> Mr. Ashbrook moves to commit Senate Concurrent Resolution 95 to the Committee on International Relations with instructions to report the concurrent resolution back forthwith with the following amendment: Strike period after last paragraph and insert the following: "and it is further resolved that it is the sense of Congress that the United States recall our representatives at the SALT talks. . . .

MR. ZABLOCKI: Mr. Speaker, I make the point of order against the instructions in this motion to commit Senate Concurrent Resolution 95 for the same reasons that I pointed out and stated before. . . . We are not dealing with SALT negotiations in this resolution. . . . [T]he instructions to recall our United States representatives at the SALT talks truly have no basis. . . .

THE SPEAKER PRO TEMPORE: The Chair is ready to rule.

The Chair has examined the motion to commit offered by the gentleman from Ohio (Mr. Ashbrook), which would commit the concurrent resolution to the Committee on International Relations with instructions to report back the concurrent resolution with an amendment. The amendment that would be reported back provides as follows:

> It is further resolved that it is the sense of Congress that the United States recall our representatives at the SALT talks as further evidence of the commitment of this Nation to the principles set out in this resolution.

As stated in the last ruling by the Chair, there is nothing in the concurrent resolution before the House pertaining to the SALT talks or to this country's diplomatic initiatives toward the Soviet Union. It is for that reason that the Chair believes that any reference to a specific diplomatic relationship between the two countries, be it the SALT talks or space exploration or cooperation in the International Olympics, would not be germane to a resolution which merely expresses congressional concern over actions of Soviet leaders.

For that reason, it is the opinion of the Chair that the amendment offered by the gentleman from Ohio in his motion to commit is broader than the scope of the concurrent resolution and, therefore, is not germane.

Accordingly, the point of order is sustained.

Supplemental Military Authorizations—Instructions To Address Foreign Policy Objectives

§ 23.3 During consideration of a bill authorizing military expenditures, a motion to recommit with instructions was ruled out on a point of order because it contained provisions seeking to prescribe foreign policy objectives.

In the 90th Congress, during consideration of supplemental military authorizations for fiscal 1967,[14] the following motion was reported.[15]

> Mr. [Henry S.] Reuss [of Wisconsin] moves to recommit the bill H.R. 4515 to the Committee on Armed Services with instructions to report the same back to the House forthwith with the following amendment:
>
> On page 4, line 10, after "$624,500,000", insert:
>
> TITLE I—STATEMENT OF CONGRESSIONAL POLICY
>
> Sec. 401. None of the funds authorized by this Act shall be used except in accordance with the following declaration by Congress of . . .
>
> (2) its support of efforts being made by the President of the United States and other men of good will throughout the world to prevent an expansion of the war in Vietnam. . . .[16]

A point of order was made, as follows:

> MR. [L. MENDEL] RIVERS [of South Carolina]: Mr. Speaker, I make the point of order that the instructions contained in the motion to recommit are not germane to the bill under consideration. . . . [17]

The Speaker,[18] in ruling on the point of order, stated: [19]

> The bill presently before the House authorizes appropriations for military procurement, research, development, and military construction, both in the United States and abroad.
>
> The amendment in the motion to recommit with instructions offered by the gentleman from Wisconsin, provides for a new section to be added at the end of the bill which would contain a "Statement of congressional policy". . . .
>
> Because of the nature of this amendment, the Chair is of the opinion that it deserves the attention and consideration of a committee of this House other than armed services, which reported the bill now before the Committee. Were this amendment introduced as a bill, it would be within the jurisdiction of the Committee on Foreign Affairs.
>
> The bill before the House deals with military authorizations; the motion to recommit goes to the foreign policy of the United States. . . .
>
> The Chair sustains the point of order.

After such ruling, another motion to recommit was made and rejected. During the proceedings, the following exchange occurred: [20]

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14. H.R. 4515 (Committee on Armed Services).

15. 113 CONG. REC. 5155, 90th Cong. 1st Sess., Mar. 2, 1967.

16. Mr. Reuss had previously offered the declaration of policy stated above as an amendment during consideration of the bill; the amendment had been held to be not germane. See § 4.32, supra.

17. *Parliamentarian's Note:* In the actual proceedings, Mr. Rivers made the above point of order prior to completion of the reading of the motion.

18. John W. McCormack (Mass.).

19. 113 CONG. REC. 5155, 5156, 90th Cong. 1st Sess., Mar. 2, 1967.

20. *Id.* at p. 5156.

MR. [HAROLD R.] GROSS [of Iowa]: I respectfully ask the Speaker if the rule which made this bill in order provided for only one motion to recommit.

THE SPEAKER: The Chair will state it applies to one valid motion to recommit. The other motion was ruled out of order.

Amendment Containing Change in Permanent Law Not Germane to Joint Resolution Continuing Appropriations

§ 23.4 To a joint resolution reported from the Committee on Appropriations continuing appropriations and containing diverse legislative provisions relating to funding directions and limitations, an amendment in the form of a motion to recommit with instructions containing a permanent change in existing law (within the jurisdiction of the Committee on Post Office and Civil Service) relating to salaries and allowances of certain federal employees was conceded to be nongermane.

During consideration of House Joint Resolution 370 (continuing appropriations) in the House on Dec. 10, 1981,(1) the Speaker(2) sustained a point of order against a motion to recommit with instructions, as described above. The proceedings were as follows:

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Speaker, pursuant to the order of the House of yesterday, I call up the joint resolution (H.J. Res. 370)) making further continuing appropriations for the fiscal year 1982, and for other purposes, and ask for its immediate consideration.

The Clerk read the joint resolution, as follows:

H.J. RES. 370

Resolved . . . That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations, and other organizational units of the Government for the fiscal year 1982, and for other purposes, namely:

Sec. 101. (a)(1) Such amounts as may be necessary for projects or activities (not otherwise specifically provided for in this joint resolution) for which appropriations, funds, or other authority would be available. . . .

Sec. 118. Notwithstanding any other provision of the joint resolution, the funds made available by this joint resolution which would be available under H.R. 4560, the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriation Act, 1982, as reported to the Senate on November 9, 1981, for Student Financial Assistance shall be subject to the following additional conditions:

(1) The maximum Pell Grant a student may receive in 1982–1983 academic year is $1,800, notwith-

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1. 127 CONG. REC. 30497, 30500–02, 30530, 30536–38, 97th Cong. 1st Sess.

2. Thomas P. O'Neill (Mass.).

standing section 411(a)(2)(A)(i)(II) of the Higher Education Act of 1965. . . .

Sec. 132. Notwithstanding any other provision of title 23, United States Code, or of this joint resolution, the Secretary of Transportation shall approve, upon the request of the State of Indiana, the construction of an interchange to appropriate standards at I–94. . . .

Sec. 135. (a) Notwithstanding the provisions of section 305 of H.R. 4120 made applicable by section 101(h) of this joint resolution, but subject to subsection (b) of this section, nothing in section 101(h) shall (or shall be construed to) require that the rate of salary or basic pay, payable to any individual for or on account of services performed after December 31, 1981, be limited to or reduced to an amount which is less than—

(1) $59,500, if such individual has an office or position the salary or pay for which corresponds to the rate of basic pay for level III of the Executive Schedule under section 5314 of title 5, United States Code;

(2) $58,500, if such individual has an office or position the salary or pay for which corresponds to the rate of basic pay for level IV. . . .

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Speaker, I offer a motion to recommit. . . .

THE SPEAKER: The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Conte moves to recommit House Joint Resolution 370 to the Committee on Appropriations, with instructions to that Committee to report the joint resolution back to the House forthwith, with the following amendment:

Strike out all after the resolving clause, and insert in lieu thereof: . . .

Sec. 141. Notwithstanding any other provision of law or of this joint resolution:

(a) Section 4109 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) Notwithstanding subsection (a)(1) of this section, the Administrator, Federal Aviation Administration, may pay an individual training to be an air traffic controller of such Administration, during the period of such training, at the applicable rate of basic pay for the hours of training officially ordered or approved in excess of 40 hours in an administrative workweek.".

(b) Section 5532 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(f)(1) Notwithstanding any other provision of law, the retired or retainer pay of a former member of a uniformed service shall not be reduced while such former member is temporarily employed, during the period described in paragraph (2) or any portion thereof, under the administrative authority of the Administrator, Federal Aviation Administration, to perform duties in the operation of the air traffic control system or to train others to perform such duties.

"(2) The provisions of paragraph (1) of this subsection shall be in effect for any period ending not later than December 31, 1984, during which the Administrator, Federal Aviation Administration, determines that there is an unusual shortage of air traffic controllers performing duties under the administrative authority of such Administration.". . . .

(g) Section 8344 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(h)(1) Subject to paragraph (2) of this subsection, subsections (a), (b),

(c), and (d) of this section shall not apply to any annuitant receiving an annuity from the Fund while such annuitant is employed, during any period described in section 5532(f)(2) of this title or any portion thereof, under the administrative authority of the Administrator, Federal Aviation Administration, to perform duties in the operation of the air traffic control system or to train other individuals to perform such duties. . . .

(4) Notwithstanding any other provision of this section, or any other provision of law, payments under this section shall be made only from appropriations provided in appropriation Acts. . . .

MR. [WILLIAM D.] FORD of Michigan: Mr. Speaker, I raise the point of order against the motion to recommit on the basis that the instructions contain matter which is not germane to the joint resolution.

The general rule, as stated in section 18.1 of chapter 28 of Deschler's Procedure, is as follows:

> It is not in order to propose, as part of a motion to recommit, any proposition which would not be germane if proposed as an amendment to the bill.

Mr. Speaker, section 141 of the amendment in the motion to recommit with instructions contains matter which clearly is not germane to the joint resolution.

Specifically, section 141 authorizes additional pay for air traffic controllers and certain other employees of the Federal Aviation Administration, exempts such employees from the limitation on premium pay, and exempts military and civil service retirees who are reemployed by FAA from those provisions of existing law which prohibit the simultaneous receipt of civil service pay and retirement pension.

The provisions of section 141 are nongermane for several reasons.

First, section 141 permanently authorizes payment of additional compensation whereas the provisions of the continuing resolution are limited to fiscal year 1982.

Second, the subject matter of all of the provisions of section 141 of the amendment are within the jurisdiction of the Committee on Post Office and Civil Service—not the Committee on Appropriations.

Finally, Mr. Speaker, the provisions of section 141 of the amendment are not germane to the fundamental purpose of the continuing resolution.

The fundamental purpose of House Joint Resolution 370 is to appropriate funds for certain programs and activities in fiscal year 1982 or to limit the use of funds for certain programs and activities. Section 141 which authorizes additional pay for certain employees of the FAA clearly is not germane to that purpose of the resolution. . . .

MR. CONTE: Mr. Speaker, if the gentleman from Michigan, my good friend, insists on his point of order and wants to deny the air traffic controllers this pay raise before Christmas, I must concede the point of order.

THE SPEAKER: The Chair sustains the point of order.

Amendment Providing for Transfer of Unexpended Balances of Funds Previously Appropriated, in Lieu of Appropriation of New Budget Authority

§ 23.5 It is not germane to change a direct appropria-

tion of new budget authority from the general fund of the Treasury into a reappropriation (in effect a rescission) of funds previously appropriated for an entirely different purpose in a special reserve account; thus, to a bill providing new budget authority for emergency agricultural credit, an amendment contained in a motion to recommit with instructions to provide, in lieu of that new budget authority, for a transfer of unexpended balances of funds previously appropriated for a totally unrelated purpose was held to be not germane.

The proceedings of Feb. 28, 1985, relating to H.R. 1189, the Emergency Farm Credit Appropriation for fiscal 1986, are discussed in § 15.39, supra.

Amendment in Motion To Recommit as Waiving Laws Within Other Committees' Jurisdiction

§ 23.6 While ordinarily an amendment waiving provisions of law within another committee's jurisdiction is not germane to a bill reported by a different committee, where the bill as amended already contains diverse provisions relating to the subject of the amendment, a waiver of other provisions of law on that subject may be germane; thus, to a bill reported from the Committee on Agriculture relating to registration of pesticides but also including provisions on liability under other federal law and on judicial review of regulations and pesticide use, an amendment in the form of a new title included in a motion to recommit waiving any other law otherwise requiring payment of attorneys' fees for civil actions brought under the law being amended was held germane to the bill as a whole, committee jurisdiction no longer being the exclusive test of germaneness since the bill as a whole and as amended contained matters within another committee's jurisdiction.

On Sept. 19, 1986,[3] during consideration of H.R. 2482[4] in the House, Speaker Pro Tempore Steny A. Hoyer, of Maryland, overruled a point of order against

3. 132 CONG. REC. 24741, 24742, 24746, 24747, 24769, 99th Cong. 2d Sess.

4. The Federal Insecticide, Fungicide and Rodenticide Act.

the amendment described above. The proceedings were as follows:

SEC. 811. REVIEW OF REGULATIONS.

Section 16 (7 U.S.C. 136n) is amended by adding at the end thereof the following:

"(e) Review of Regulations.—

"(1)(A) Any regulation issued under this Act and first published in the Federal Register in final form after the effective date of the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986 shall be reviewable only as provided by this subsection. Any person may obtain judicial review of the regulation by filing a petition for review in the United States court of appeals for the circuit wherein the person resides or has its principal place of business or in the United States Court of Appeals for the District of Columbia Circuit. Any petition under this paragraph for review of a regulation shall be filed within 120 days after the date of promulgation of the regulation as designated by the Administrator in the Federal Register.". . .

SEC. 821. LIABILITY.

(a) Pesticide Use.—An agricultural producer shall not be liable in any action brought after the effective date of this Act under any Federal statute for damages caused by pesticide use unless the producer has acted negligently, recklessly, or intentionally. Proof that the agricultural producer used the pesticide in a manner consistent with label instructions shall create a rebuttable presumption that the agricultural producer did not act negligently. . . .

Amendment offered by Mr. Bedell as a substitute for the amendment offered by Mr. Roberts: Section 821(a) of the text of H.R. 5440 (the Amendment in the nature of a Substitute to H.R. 2482), is amended (page 138, lines 2 through 10) to read as follows:

SEC. 821. LIABILITY FOR LAWFUL APPLICATION.

(a) Pesticide Use and No Private Right of Action.—(1) Liability under Federal environmental statutes for the costs of response or damage incurred with respect to a release or threatened release into the environment of a pesticide shall, in any case where the application was in compliance with label instructions and other applicable law, be imposed on the registrant or other responsible parties, not the agricultural producer, unless the producer has acted negligently, recklessly, or with the intent to misuse such pesticide. There shall be a rebuttable presumption that the application was in compliance with label instructions and otherwise lawful. . . .

THE CHAIRMAN: The question is on the amendment offered by Mr. Bedell as a substitute for the amendment offered by Mr. Roberts.

The amendment offered as a substitute for the amendment was agreed to.

THE CHAIRMAN: The question is on the amendment offered by the gentleman from Kansas [Mr. Roberts], as amended.

The amendment, as amended, was agreed to. . . .

MR. [RON] MARLENEE [of Montana]: Mr. Speaker, I offer a motion to recommit. . . .

THE SPEAKER PRO TEMPORE: . . . The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Marlenee moves to recommit the bill, H.R. 2482 (as amended by H.R. 5440) to the Committee on Agriculture with the instructions that it adopt the following amendment and forthwith report it back to the House:

Amendment to the text of H.R. 5440 (the amendment in the nature of a substitute to H.R. 2482), after page 163, line 21, insert the following new title:

TITLE XII—LIMITATION ON USE OF FUNDS

FEES AND EXPENSES IN CIVIL ACTIONS

Sec. 1201. The Act is amended by inserting the following new section after section 31:

"Sec. 32. Notwithstanding any other provision of law, no attorneys fees or expenses shall be awarded for any civil action brought under section 3(a) of this Act for failure to meet deadlines.". . . .

MR. [DAN] GLICKMAN [of Kansas]: Mr. Speaker, I make a point of order on the motion to recommit that the motion is not germane under clause 7 of rule XVI of the rules of the House. . . .

MR. MARLENEE: . . . Mr. Speaker, my amendment, I submit, is germane for the following reasons:

The title of the bill is for "other purposes" than amending FIFRA.

Other examples of enactments amended by this bill or by the underlying FIFRA Act are the Federal Food, Drug and Cosmetics Act.

The bill authorizes a program and funding for the pesticide program. It also adds a new program, reregistration, new section 3(a) of FIFRA. Both this section and the bill relate to fees and funding for the Reregistration Program. Some of that funding for the Reregistration Program will come from fees assessed against registrants (see page 42 of H.R. 5440) and some will come from appropriated funds.

My amendment would state how some of those funds could not be utilized, and I submit does not violate the rules of the House on that germaneness.

The bill (title VIII) is rife with references to courts and court review. . . .

THE SPEAKER PRO TEMPORE: The Chair is prepared to rule.

The gentleman from Kansas [Mr. Glickman] makes a point of order that the amendment proposed by the instructions in the motion to recommit offered by the gentleman from Montana [Mr. Marlenee] is not germane. Volume III, section 2709 of Cannon's Precedents indicates that it is not in order to include in a motion to recommit instructions to insert an amendment not germane to the section of the bill to which offered. While an earlier version of this amendment was held not germane when offered as an amendment to title I of the bill being read title by title, this amendment proposes to add a new title at the end of the bill limiting the award of attorneys' fees in certain civil actions brought under section 16 of the FIFRA law. The test of germaneness is now properly measured against the bill taken as a whole. The Chair notes that section 202 of the bill deals with civil actions against the United States for just compensation, and that the bill extensively amends other sections of the FIFRA law in titles VIII and IX. In the opinion of the Chair, since the bill already deals with issues relating to adminis-

trative procedure and judicial review of actions taken under this act, the amendment is germane to the bill as a whole, and the point of order is overruled.

Injunctions Against Deprivation of Voting Rights—Amendment Providing for Jury Trials in Resulting Contempt Cases

§ 23.7 To a bill giving federal courts authority to entertain civil actions for injunctive relief in cases of deprivation of voting rights, a motion to recommit with instructions to report back with an amendment providing for jury trials in contempt cases arising from actions instituted under the act was held to be germane.

In the 85th Congress, during consideration of a bill[5] to provide means of further securing and protecting the civil rights of persons within the jurisdiction of the United States, a motion to recommit was offered[6] as described above. A point of order was raised against the motion, as follows:

MR. [KENNETH B.] KEATING [of New York]: Mr. Speaker, I make the point of order that the wording of the motion to recommit is not germane to the bill. We have already debated the germaneness of the wording of this motion in Committee of the Whole. But, I have this additional observation to make . . . that this proposed amendment is to the act, whereas it is inserted as an amendment to a section of the act. . . .

I urge that if the amendment were to the act, as it purports to be, it would have to be at some other point in the bill and could not be an amendment to the act in the middle of one of the sections of the act.

The Speaker[7] overruled the point of order.

Bill Prohibiting Poll Tax—Instructions To Change Form to Joint Resolution To Amend Constitution

§ 23.8 During consideration of a bill, reported by the Committee on House Administration, prohibiting poll taxes, a motion to recommit the bill with instructions to report it back in the form of a joint resolution amending the Constitution to accomplish the purpose of the bill, was held to be not germane.

In the 81st Congress, during consideration of a bill[8] prohib-

5. H.R. 6127 (Committee on the Judiciary).

6. 103 CONG. REC. 9517, 85th Cong. 1st Sess., June 18, 1957.

7. Sam Rayburn (Tex.).

8. H.R. 3199 (Committee on House Administration).

iting poll taxes, a motion to recommit with instructions was reported[9] as described above. The Speaker,[10] stating that, "a constitutional amendment involving this question would lie within the jurisdiction of the Committee on the Judiciary and not within the Committee on House Administration," sustained a point of order raised by Mr. Vito Marcantonio, of New York.

Instructions Not Proposing Direct Amendment to Bill

§ 23.9 Instructions contained in a motion to recommit must be germane to the subject matter of the bill whether or not the instructions propose a direct amendment thereto; thus, a motion to recommit a joint resolution, proposing a constitutional amendment for representation of the District of Columbia in Congress, with instructions that the Committee on the Judiciary consider a resolution retroceding populated portions of the District to Maryland, was held not germane to the joint resolution.

On Mar. 2, 1978,[11] the Speaker[12] sustained a point of order against the following motion to recommit House Joint Resolution 554 (a Constitutional amendment for District of Columbia representation in Congress):

MR. [CHARLES E.] WIGGINS [of California]: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER: Is the gentleman opposed to the joint resolution?

MR. WIGGINS: I am, Mr. Speaker.

THE SPEAKER: The Clerk will report the motion to recommit.

The Clerk read as follows:

> Mr. Wiggins of California moves to recommit the joint resolution (H.J. Res. 554) to the Committee on the Judiciary with instructions that it consider a resolution to retrocede the populated portions of the District of Columbia to the State of Maryland.

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. BAUMAN: Mr. Speaker, do not motions to recommit have to be germane to the legislation before us?

THE SPEAKER: The Chair will advise the gentleman that he is correct.

MR. BAUMAN: Mr. Speaker, I make a point of order against the motion to recommit.

THE SPEAKER: The gentleman will state his point of order.

MR. BAUMAN: Mr. Speaker, I make a point of order against the motion to re-

9. 95 CONG. REC. 10247, 81st Cong. 1st Sess., July 26, 1949.

10. Sam Rayburn (Tex.).

11. 124 CONG. REC. 5272, 95th Cong. 2d Sess.

12. Thomas P. O'Neill (Mass.).

commit on the ground that it is not germane to the legislation before us because it suggests retrocession of the territory of the District of Columbia to the State of Maryland, which is not at any point encompassed in this legislation. The bill deals only with the creation of the offices of two Senators and of Members of Congress for the District of Columbia. Since this proposition would not have been germane to the bill as an amendment, it is not now germane.

THE SPEAKER: Does the gentleman from California (Mr. Wiggins) desire to be heard on the point of order?

MR. WIGGINS: I do, Mr. Speaker.

Mr. Speaker, I am trodding on what is virgin ground for me. I am not sure what the rules of germaneness are with respect to a motion to recommit with instructions, the focus of which is to instruct the Committee on the Judiciary, from whence the joint resolution came, to reconsider an alternative means of achieving the objective of the legislation.

It would strike me, as a matter of first blush, that an alternative means of achieving a common result is, of course, quite germane; but I have no doubt that the precedents of the House have previously considered this measure, and I will yield to those precedents.

THE SPEAKER: Does the gentleman from Maryland (Mr. Bauman) desire to be heard further?

MR. BAUMAN: I do, Mr. Speaker.

Upon that subject, Mr. Speaker, I question the appropriateness of the instructions in view of the fact that the retrocession, as I understand it, would not require a constitutional amendment, but, in fact, a simple statutory act by the Congress.

MR. WIGGINS: Mr. Speaker, if I may be heard just a few moments longer to clarify the situation, I am advised by my parliamentary experts on either side that the rules of the House require that amendments be germane. This motion to recommit is, of course, not an amendment.

Secondly, it is my view, contrary to the position taken by the gentleman from Maryland (Mr. Bauman), that a retrocession procedure, which I personally favor, would require a constitutional amendment and may not be achieved solely by reason of legislation.

THE SPEAKER: The Chair is ready to rule.

With regard to germaneness, an amendment of a similar type would not have been germane to the joint resolution.

Furthermore, the principle of germaneness is applicable to the extent that the House cannot direct a committee to consider another unrelated subject under the guise of a motion to recommit whether or not the motion is in the form of a direct amendment to the bill (Cannon's VIII, 2704).

Therefore, the gentleman's point of order is sustained.

Parliamentarian's Note: Instructions in this form, since not proposing an amendment, do not technically fall within Rule XVI, clause 7, prohibiting nongermane amendments. But the rule has been applied to prohibit instructions directing a committee to study or consider a nongermane

approach (see § 796, House Rules and Manual, 101st Cong.), and to prohibit instructions directing the committee not to report back to the House until an unrelated contingency occurs (see 8 Cannon's Precedents § 2704).

Repeal of Oleomargarine Tax—Amendment To Repeal Other Revenue Laws

§ 23.10 To a bill seeking the repeal of the tax on oleomargarine, an amendment which was contained in a motion to recommit with instructions and which sought the repeal of certain provisions of the general revenue laws affecting substances other than oleomargarine was held not germane.

In the 80th Congress, a bill [13] was under consideration to repeal the tax on oleomargarine. A motion was made [14] as described above. A point of order was raised against the motion, as follows:

> MR. [L. MENDEL] RIVERS [of South Carolina]: The proposed motion is not germane to the bill. It seeks to amend a provision of law with which this bill does not deal.

The Speaker,[15] in ruling on the point of order, stated:

> . . . The Chair would hold that the bill under consideration is one which deals solely with oleomargarine. The instructions contained in the motion to recommit deal with a part of the general revenue laws and other substances which do not include oleomargarine. Therefore, the Chair sustains the point of order.

Bill Prescribing Amounts of Coverage Under Federal Deposit Insurance Act—Amendment To Limit Coverage Except Where Collateral Pledged

§ 23.11 To a bill prescribing the amount and extent of deposit insurance coverage for various savings institutions, an amendment to a motion to recommit limiting the insurance coverage under the bill as to time deposits, and permitting coverage in excess of that limitation upon the pledging of sufficient collateral, was held germane.

On Feb. 5, 1974,[16] during consideration of H.R. 11221, amending the Federal Deposit Insurance Act, the House defeated an amendment reported from Committee of the Whole striking out a section, rejected the previous question on a straight motion to

13. H.R. 2245 (discharged from the Committee on Agriculture).

14. 94 CONG. REC. 5007, 80th Cong. 2d Sess., Apr. 28, 1948.

15. Joseph W. Martin, Jr. (Mass.).

16. 120 CONG. REC. 2079-81, 93d Cong. 2d Sess.

recommit, and then amended the motion to include instructions to reinsert in the bill amendments which had tentatively been adopted in Committee of the Whole but then deleted by the amendment striking out that section as so amended. The proceedings were as follows:

MR. [BEN B.] BLACKBURN [of Georgia]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:[17] The gentleman will state his parliamentary inquiry.

MR. BLACKBURN: Mr. Speaker, as I understand the procedure, with the defeat of the Wylie amendment in the Whole House, we have now before us the original bill, and the original bill did not contain the provision which would have permitted credit unions to share in such deposits.

Now, Mr. Speaker, am I correct in that? If the credit union provision was added by the committee, are we not now back to the original bill?

THE SPEAKER: The Chair will state that the committee amendment on page 7 is no longer in the bill, as it was not reported from Committee of the Whole.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time and was read the third time.

MR. BLACKBURN: Mr. Speaker, I offer a motion to recommit. . . .

THE SPEAKER: The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Blackburn moves to recommit the bill H.R. 11221 to the Committee on Banking and Currency.

[The previous question was voted down.]

MR. [THOMAS L.] ASHLEY [OF OHIO]: Mr. Speaker, I offer an amendment to the motion to recommit. . . .

THE SPEAKER: . . . The Clerk will report the amendment to the motion to recommit.

The Clerk read as follows:

Amendment offered by Mr. Ashley to the motion to recommit offered by Mr. Blackburn: At the end of the motion, add the following instructions: With instructions to report back forthwith with the following amendment: On page 7, immediately after line 2, insert the following new subsection:

(d) Section 107(7) of the Federal Credit Union Act (12 U.S.C. 1757(7)) is amended by adding at the end thereof the following: "; and to receive from an officer, employee, or agent of those nonmember units of Federal, State, or local governments and political subdivisions thereof enumerated in section 207 of this Act (12 U.S.C. 1787) and in the manner so prescribed payments on shares, share certificates, and share deposits".

And on page 2, section (2) lines 16 through 25 be eliminated and on page 3, lines 1 through 10 be eliminated and that the following language be inserted in lieu thereof:

"(i) an officer, employee, or agent of the United States having official custody of public funds and lawfully investing or depositing the same in time deposits in an insured bank. . . .

And that on page 3, section (B), lines 13 through 17 be eliminated and the following language be inserted:

17. Carl Albert (Okla.).

"(B) The Corporation may limit the aggregate amount of funds that may be invested or deposited in time deposits in any insured bank by any depositor referred to in subparagraph (A) of this paragraph on the basis of the size of any such bank in terms of its assets. *Provided*, however, such limitation may be exceeded by the pledging of acceptable securities to the depositor referred to in subparagraph (A) of this paragraph when and where required.". . .

MR. [GARRY] BROWN OF Michigan: Mr. Speaker, I make [a] point of order on the amendment to the motion to recommit . . . . The last part of the amendment to which I refer is entitled "B", beginning with, "The corporation may limit" and so forth. I say that the final language is not germane to the bill.

That language is as follows:

Provided, *however*, such limitation may be exceeded by the pledging of acceptable securities to the depositor referred to in subparagraph (A) of this paragraph when and where required.

Mr. Speaker, since the bill deals basically with insuring of accounts and has nothing to do with pledging of collateral, it, therefore, is not germane to the bill. . . .

MR. [ROBERT G.] STEPHENS [Jr., of Georgia]: Mr. Speaker, I wish to state that the gentleman had not made a point of order on this matter in the committee when this first came up, and it is not timely now. . . .

MR. BROWN of Michigan: Mr. Speaker, in response to the gentleman from Georgia (Mr. Stephens) I will only say that the fact that the point of order was not raised against the amendment in the Committee of the Whole does not preclude me from offering one in connection with the motion to recommit.

THE SPEAKER: The Chair will state that the point of order is timely and it appears clear to the Chair that the question of limitation of funds is in the first section of the bill; and the Chair, therefore, overrules the point of order.

§ 24. Amendment Proposing Permanent Legislation Offered to Temporary Legislation

This section [18] discusses precedents which support the principle that an amendment proposing a permanent change in law [19] or in procedures under House rules, [20] is, in general, [1] not germane if of-

18. See also, for example, § 39, infra, discussing amendments to bills that extend existing law. And see § 15, supra, discussing amendments to appropriation bills, especially §§ 15.23–15.25 (amendments providing permanent legislation offered to provisions affecting funds appropriated for one year); and § 23.4 (instructions, affecting permanent law, contained in a motion to recommit a joint resolution continuing appropriations).

19. See, for example, §§ 24.4 and 24.5, infra.

20. See § 24.3, infra.

1. For an instance, on the other hand, in which the Chair took the view that an amendment apparently permanent in form could in fact be construed to amount to a temporary measure, see § 24.7, infra. See also Sec. 24.8, infra.